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**Citation for published version:**

Cripps, E 2011, 'Climate Change, Collective Harm and Legitimate Coercion', *Critical Review of International Social and Political Philosophy*, vol. 14, no. 2, pp. 171-193. <https://doi.org/10.1080/13698230.2011.529707>

**Digital Object Identifier (DOI):**

[10.1080/13698230.2011.529707](https://doi.org/10.1080/13698230.2011.529707)

**Link:**

[Link to publication record in Edinburgh Research Explorer](#)

**Document Version:**

Peer reviewed version

**Published In:**

Critical Review of International Social and Political Philosophy

**Publisher Rights Statement:**

© Cripps, E. (2011). Climate Change, Collective Harm and Legitimate Coercion. *Critical Review of International Social and Political Philosophy*, 14(2), 171-193. 10.1080/13698230.2011.529707

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# Climate Change, Collective Harm and Legitimate Coercion

Elizabeth Cripps<sup>1</sup>

## Abstract

Liberalism faces a tension between its commitment to minimal interference with individual liberty and the urgent need for strong collective action on global climate change. This paper attempts to resolve that tension. It does so on the one hand by defending an expanded model of collective moral responsibility, according to which a set of individuals can be responsible, *qua* “putative group”, for harm resulting from the predictable aggregation of their individual acts. On the other, it defends a collectivised version of the harm principle. The claim is that the collectivised harm principle pushes the burden of argument, against coercively enforced measures to curtail climate change and compensate its victims, onto the global elite collectively responsible for environmental harms. Some such potential arguments are briefly considered and rejected.

## Main text

There is an urgent need to tackle global climate change. This is hard for liberals, or anyone else, to deny. However, there is a serious obstacle to doing so within the framework of liberalism – a school of thought centred, as Feinberg (1987, p. 14) has put it, on keeping liberty-limiting principles to a minimum. Any serious collective

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attempt, at global or state level, to curtail climate change or mitigate its harmful effects would place limitations on the actions of individuals. It would, in other words, restrict their liberty.

One instinctively appealing way out is to draw on the following combination of claims, all of which are sufficiently uncontroversial to be taken as assumptions for the purposes of this paper: that human activity causes climate change; that climate change harms people; that those responsible for harm have a *prima facie* duty to stop the harm and compensate its victims; and that this duty is at least *prima facie* enforceable. The third claim is taken from conventional morality; the fourth is the one almost universally acknowledged liberty-limiting principle: the harm principle.

However – and here is the rub – applying the latter two claims requires identifying an agent responsible for the harm, who might accordingly be required to correct it. As has become clear in the debate over “polluter pays” strategies for allocating environmental costs, it is difficult, if not impossible, to pin down *individuals* responsible for climate change (e.g. Caney 2005). Some effects might be traced to specific states or corporations, but not all. Rather, as Kutz (2000, p. 171) puts it: ‘Environmental damage is typically the result of the knowing but uncoordinated activity of disparate individuals, each of whose actions contributes only imperceptibly to the resulting harm.’ How, then, can it be argued that they cause harm, are morally responsible for global climate change, and could legitimately be coerced into changing their behaviour?<sup>2</sup>

This paper proposes a way around this difficulty, by appealing to an expanded understanding of collective responsibility and a collectivised version of the harm principle. Liberalism can, I suggest, retain its core individualism – its focus on the

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<sup>2</sup> Hayward (2008, p. 6) makes this point against Pogge’s (2002) negatively-derived duty to reform institutions to assist the global poor.

individual as the unit of moral value and its aim of protecting individual liberty *for all* – whilst acknowledging explicitly the potential for large numbers of individual humans to cause harm between them.

Part I will defend a model of weak collective responsibility, according to which a number of individuals (a “putative group”) can be collectively responsible for harm resulting from the predictable aggregation of their individual acts, even if there is no intention to harm, or even to act collectively. This goes beyond the work of May (1987, 1992), who has already expanded the idea of collective responsibility beyond the standard, corporate model. It also takes a distinct line from, although it draws some conclusions parallel to, Kutz’s (2000) discussion of environmental damage as an unstructured harm.

Part II will defend a collectivised version of the harm principle, drawing on Kernohan’s (1998) defence of an accumulative harm principle. The claim is not that liberty restrictions are *always* legitimate in cases of collective (or individual) harm, but rather that responsibility for harm shifts the burden of argument onto those harming. Part III will briefly consider some such potential arguments in the case of climate change.

Those to be held collectively responsible are, broadly put, Pogge’s ‘global elite’ (2002, p. 23) – westerners and the rich minority in poor countries – although more specific criteria will be sketched at the end of Part I. The harm is done to two sets of persons, to the extent of undermining their central capabilities or fundamental interests: those (generally the poor) whose chances of a flourishing life are already threatened by climate change, and future generations, including both the as-yet unborn and the current generation of children.

Given this, coercively-imposed measures might be defended at either or both of two levels. Firstly, an attempt by the harming elite, or its subsets, to fulfil the collective duty to end environmental harm could involve the legitimate allocation of enforceable duties to individual members. Secondly, some legitimately-established authority at the level of the broader, global collectivity (containing also those harmed) might be entitled to restrict the harm-causing ability of the elite, thereby limiting the liberty of its members.

However, it is worth stressing the limited nature of the claims advanced in this paper. My intention is to find space within liberalism for collective measures to tackle climate change, even if there is no neat causal link between “shares” of environmental harm and the actions of individuals. It is certainly not to suggest that there is now a cut and dried case for any institution, no matter how undemocratically established and how unfairly it distributes individual duties, to set itself up as a global environmental tsar and hand out coercively backed restrictions on individual action.

## **I. Weak collective responsibility**

### *i. Bridging a “gap” in moral thought*

Climate change, alongside such other features of the modern world as global poverty and the global economic downturn, serves to illustrate the limitations of conventional moral thought. As Scheffler (2001, p. 40) puts it:

[D]evelopments... [including] ... increased economic and political interdependence... and the enormous growth in world population... have made it more difficult than ever to sustain the conception of human social relations as consisting primarily in small-scale interactions among

single individuals... [P]olitical and economic developments in one area of the globe often have rapid and dramatic effects on people in other areas... [H]uman behaviour now has effects on the natural environment that are unprecedented in scale. These environmental effects distribute themselves in complicated ways within and across national boundaries...

Collections of individuals who do not constitute formalised, acknowledged groups can and do cause great, and morally regrettable, harms. The possibility thus raised by Scheffler (2001, pp. 32-47), which this paper will fill out, is that of morally derived reparative duties binding a number of individuals *collectively*, even though it would be inappropriate to *blame* them individually and they are not acting in combination through some social or institutional structure.

That is not to advocate ignoring the question of what *I*, the individual, should do altogether. Far from it, given that my conclusion will be that it can sometimes be legitimate to interfere with individual liberty to prevent collective environmental harm: in other words, that there may be *enforceable* individual correlative duties. The claim is, rather, that the demands on individuals in such cases are most appropriately identified by reference to the harm for which *we*, collectively, are responsible, and our corresponding *collective* duty to do something about it.

This section will lay out the model, sketch some implications in terms of duties, distinguish it from rival accounts by May and Kutz, and defend it by responding to some key objections.

The claim to be defended is as follows:

*Weak collective responsibility claim*

A number of individuals who do not yet constitute a collectivity (either formally, with an acknowledged decision structure or informally, with some

vaguely defined common interest or goal) can be held *morally collectively* responsible for a harm which has been caused by the predictable aggregation of individual actions.<sup>3</sup>

“Predictable” has a double meaning: individuals are acting predictably, in that they are acting in pursuit of their goals or interests, and it is predictable (reasonably foreseeable) that those actions, in combination, will result in harm.

Consider the following situation.<sup>4</sup> A number of teenagers, all independently, decide to swim in a small lake. They dive in, swim around very flashily and, between them, cause so much turbulence that a child also (independently) swimming in the lake is drowned.

What is the appropriate moral judgement on these teenagers? None, individually, has harmed the child: the minor turbulence caused by one alone would not have done so. There is no (collective or individual) *intention* to harm. Nonetheless, it is as a result of the combination of their actions that the child drowns. Building on standard moral thinking and on an account offered by May (1992, pp. 106-112) of collective responsibility for inaction, I suggest that whether we hold the teenagers morally (as opposed to merely causally) responsible on a particular occasion is likely to depend on whether they could reasonably be expected to be aware of the danger.

If they are all unaware of the child’s inability to swim well, of the likelihood that others besides themselves would be diving in, or of quite how much turbulence lots of teenagers jumping about in the water would create, it might be considered a tragic

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<sup>3</sup> The proposal here goes well beyond not only the standard, corporate notion of collective responsibility, which requires a formalised decision-making process, but also beyond the significant expansion of the notion already offered by May (1987, 1992). May defends the responsibility of informal groups such as mobs, as well as collective responsibility for *inaction* by a “putative group”. In the latter case, (1992, pp. 106-112), no group existed, but one could have been formed in time to prevent some harm from taking place.

<sup>4</sup> This is a variant of May’s example (2002, pp. 110-116).

accident. If, however, they do not stop their behaviour when the risk becomes apparent, or behave in exactly the same way on another occasion, with another child, then I contend that they are collectively responsible.

The argument, “It wasn’t just me – what I did wouldn’t have done any harm if there hadn’t been lots of others doing it as well” might have some appeal in saving the teenagers, *qua* individuals, from full responsibility. However, it seems sufficient to ascribe weak collective responsibility that the following condition is satisfied.

*Three-part sufficient condition for weak collective responsibility:*

- the individuals acted in ways which, in aggregate, caused harm, and which they were aware (or could reasonably be expected to have foreseen) would, in aggregate, cause harm (although each only intentionally performed his own act);
- they were all aware (or could reasonably be expected to have foreseen) that there were enough others similarly placed (and so similarly motivated to act) for the combined actions to bring about the harm; and
- the harm was collectively avoidable: by acting otherwise (which they could reasonably have done<sup>5</sup>), the individuals making up the putative group could between them have avoided the harm.

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<sup>5</sup> This should be understood as requiring that each individual had *actual* (non-terrible) alternatives – i.e. that the contributory individual actions were avoidable – rather than as suggesting that the individuals, taken only *as* individuals, acted *unreasonably*, or *wrongly*, in not pursuing those alternatives. The point being made in this paper is precisely that negatively derived individual environmental duties make sense only within a framework of collective responsibility: the harm is caused by, and could only be avoided, by combined actions. Nonetheless, it would be less plausible to hold the putative group responsible for harm if its members *could* not reasonably have acted otherwise – for example if each teenager were chased into the water by an axe-murderer, or driven mad by severe burns which he was attempting to soothe.



This model, if found acceptable, gives us a richer conceptual base from which to consider what we – and so what *I* – should be doing in the face of harms for which I do not seem to have individual responsibility but which, nonetheless, would not have occurred if I and others had acted differently.

There is, of course, a great deal to be said about duties correlating to weak collective responsibility for harm. It would be interesting to consider not only the collective duty to end and/or repair the harm and individual duties arising as part of that, but also individual duties deriving from collective responsibility in the absence of, or alongside, any such collective effort. Each of us might, for example, have a duty to try to bring about a collective endeavour, often by promoting the establishment of collective decision-making structures where none exist. We might also have duties to cease acting in the way which made us a part of the harming putative group in the first place, and/or to act so far as possible to mitigate or end the harm directly. However, these supplementary individual duties lie beyond the scope of this paper.

The relevant point for present purposes is as follows. When an individual is responsible for harm, that individual generally acquires a duty to cease to harm and often to make reparation for the damage already done. In cases of corporate responsibility for harm, similar moral requirements apply to the corporate (which will, of course, require its individual members to act in certain ways). To quote Kutz (2000, p. 200) on Union Carbide and the 1984 Bhopal tragedy: ‘Because the wrong that lay behind the gas leak is emergent at the group level, it makes sense that the duty of compensation should emerge at the group level too.’

Accordingly, in cases of weak collective responsibility, the primary corresponding duty is naturally a collective one: to do something about the harm together. That is, to act, *qua* group, to bring about an end to the harm and/or to repair or compensate for

the damage. Such collective action would require individuals to act in certain ways, i.e. to fulfil derivative individual duties. This might involve: changing their individual actions to those available alternatives which would not, in combination, cause harm; participating in some scheme which would offset the potential damage done by the (continuing) combination of individual actions and so prevent the harm; or some combination of the two. Thus, assuming fairly-established decision-making structures and fairly-allocated duties, members of the harming putative group can be said to acquire *morally*-grounded individual duties.

*ii. Shared responsibility or collective responsibility?*

Subsection I.iii will rebuff some likely objections to the model laid out above. Firstly, however, given that this the idea of weak collective responsibility builds on existing work by May on collective inaction, I will briefly defend it against the rival account which he himself offers to accommodate at least some of the cases with which I am concerned. That is, his idea of *shared* responsibility. I will also clarify how my model differs from recent work by Kutz on environmental damage as an unstructured harm.

May's notion of shared responsibility 'concerns the aggregated responsibilities of individuals, all of whom contribute to a result and for that reason are *personally* responsible, albeit often to different degrees, for a given harmful result' (1992, p. 107). Such responsibility is applied to cases of *joint undertaking*: where 'the causal contribution of each person often cannot easily be ascertained, except to say that all parties played a necessary role in the harm, and that no one party played a sufficient role' (p. 39). Rather than assign no responsibility or full responsibility to each individual, May (p. 42) advocates dividing responsibility: either by a straight division

of the harm, or (preferably) according to different roles, which could be used to assign responsibility for proportionally extensive or limited “parts” of the harm.

There are two important distinctions between my account and his. Firstly, on May’s model, each individual has personal (*individual*) responsibility for some share of the harm. Thus, presumably, individuals, *qua* individuals, have a duty not to do their “bit” of the harm (or to make reparation). My claim is that the putative group is collectively responsible. The putative group, building on May’s own terminology, is understood as a set of individuals who do not yet constitute a group in the strong sense, but are nonetheless “grouped” by the predictable harmful impact of their combined actions and could plausibly form a group to tackle the harm.<sup>6</sup> This has the significantly different implication of a primarily *collective* duty to end, or repair, the overall harm, from which certain individuals’ duties are derived. It is also, I suggest, more plausible.

Consider the ways in which a number of individuals might “contribute to” a harmful result without being part of a group in any strong sense. In the most straightforward, a number of individuals each cause small harms, which sum together to form a larger harm but one no greater than the sum of its parts. Suppose ten children in a small village each steal an apple a day from a farmer’s orchard. The attribution of personal responsibility is unproblematic.

Alternatively, each individual could contribute to the harm but without direct responsibility for any part of it. This could happen in two ways. Firstly, cases of concerted joint action, in which each individual knowingly contributes to an overall end which is either foreseeably or deliberately harmful. May, who is primarily concerned with such cases, uses the example (1992, p. 40) of cooperation to steal

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<sup>6</sup> ‘[P]utative groups [are those] in which people are sometimes capable of acting in concert but in which no formal organisation exists and, as a result, there is no decision-making apparatus.’ (May 1992, p. 109)

some silver buttons.<sup>7</sup> Secondly, however, individuals might contribute to a harm through actions which are not in themselves harmful (which may even be beneficial) and which are not intended to contribute to some common goal.<sup>8</sup> The teenagers in the lake present one example. At a wider level, Feinberg (1987, p. 228) uses the example of sulphur dioxide emissions which, in combination, render dangerous the percentage of the gas in the air.

In such cases, May's strategy is unappealing. Recall his method for assigning personal responsibility. How are individuals to be assigned "pieces" of the harm, according to the roles they played, when their actions did not constitute the performance of roles in some deliberate collective endeavour? Yet it seems equally arbitrary simply to divide up the (perhaps very significant) harm, saying that each of  $n$  individuals was responsible for  $1/n$ th of it. The point is precisely that the individual, *qua* individual, has not harmed. Nor has she contributed to a collective intentional act. Given this, it seems inappropriate to talk of each individual being assigned a share of direct personal responsibility, at all.

Consider the alternative: collective responsibility. May himself (1992, p. 107) defines this as 'the nondistributed responsibility of a group of people structured in such a way that action can occur that could not occur if the members were acting outside the group'. This is clearly a narrower, more conventional version than the weak collective responsibility model proposed here. But what the examples of the teenagers – or the polluters – bring out is that the cases have something important in common.

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<sup>7</sup> May borrows the example from Paige Keaton, W., ed., 1984.

<sup>8</sup> Although the actions are likely to be similar ones, it is at least possible that they could be different actions which combine predictably but unintentionally to bring about some harm. This brings out an additional distinction between my model and that of Kutz, one of whose jointly sufficient grounds for individual accountability for unstructured harms is participation in 'a concrete way of life that generates these harms' (2000, p. 186).

While the *action* is not collective in the strong sense of group (or corporate) action irreducible to the actions of individuals, the *result* (harm) could not have occurred were not those individuals situated, in relation to one another, in such a way that their pursuit of individual goals would have a certain predictable aggregative impact. It is only because of the way the individuals are *grouped*, in this very weak sense, that harm is done. Thus, it makes sense to assign moral responsibility collectively, albeit in a similarly weak sense, rather than attempt to divvy up the harm into individual “shares”.

The second distinction is that my model covers a wider range of cases. There are some situations in which, although the combination of actions of a large number of individuals brings about harm, no individual’s contribution is necessary for that harm. In such Overdetermination Cases, the number of individual contributory actions is above the threshold at which harm is “triggered”. May, as we saw above, specifies that each individual’s contribution must be necessary. However, my model, which leaves this open, allows for Overdetermination Cases. This is crucial, given that it is frequently in such scenarios (for example, the aggregation of individual decisions to drive cars rather than use public transport, or to fly abroad for a holiday) that environmental harm is done.

The model offered here can also be distinguished from Kutz’s account of unstructured collective harms (2000, pp. 171-191). Although, unlike May, he does consider Overdetermination Cases, and although he defends an individual duty to uphold attempts to tackle such collective harms, Kutz argues for this duty *directly*, rather than as derivative of a collective duty. Individuals, on his account, acquire such environmental duties because they can be held accountable for environmental harms on twofold grounds, neither of which he thinks would be sufficient in isolation. The

first basis for accountability is *quasi*-participatory,<sup>9</sup> because of the individual's participation in a harmful way of life, which might be viewed as a collective venture; the second is *symbolic*, or character-based.

My claim is that the individuals are collectively responsible in the sense of being responsible *qua* putative group. They acquire potentially enforceable individual duties only through the fulfilment, or enforcement, of the corresponding collective duty. Thus, as I will elaborate in I.iii below, this model avoids the charge levelled against May, which might also be put to Kutz: of making demands of individuals, *qua* individuals, on basis of harms which they, as individuals, did not bring about.

It is not clear how quasi-participation in a way of life and so-called symbolic responsibility can be regarded as strong enough to ground such demands in combination if they are assumed not to do so in isolation – and Kutz (2000, p. 186) states explicitly that neither alone is sufficient. The model offered here takes up the possibility of grounding responsibility in a “collective venture”, but in a sense broader than Kutz's understanding thereof. It uses this, independent of any question of symbolic accountability, to ground (I suggest, more plausibly) *collective* and accordingly individual duties. Although Kutz (pp. 197-202) touches on the possibility of primarily holistic accountability, his discussion of such accountability focuses on structured collectives and he does not spell out how this would transfer to the unstructured case.

### *iii. Objections*

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<sup>9</sup> “Quasi”, Kutz (2000, p. 186) explains, ‘because there is no specific project to which individuals contribute’.

Having laid out the model of weak collective responsibility and defended it as both a genuine and a plausible alternative to other recent work, I will use this subsection to respond to three potential objections. The first can quickly be dismissed: appeal to the popular idea that moral responsibility requires intentionality and to the fact that there is no (collective or individual) intention to harm in cases such as that of the teenagers. Even at the individual level, it is often sufficient for the ascription of moral responsibility that an individual could reasonably have been expected to know that what she was doing would cause harm.

However, the objection might be rephrased as follows: not only is there no intention to harm, there is no intention to act collectively *at all*. The response to this is to reiterate the twofold predictability condition in (i), above, according to which each individual can be expected not only to know that the combined actions of all those similarly placed (and so similarly motivated) would cause harm, but also that she and sufficient others *are* similarly placed. In this sense, I suggest, although there was no intention to act collectively, the collective result was reasonably foreseeable. The discussion, below, of the third condition – avoidability – should reinforce this point: something was done which not only should have been foreseen but could have been prevented.

The second objection goes as follows. I have made it clear that weak collective responsibility, unlike May's shared responsibility, accommodates Overdetermination Cases. Above, I rejected the possibility of assigning direct responsibility for shares of the harm to individuals. However, collective responsibility for harm will bring with it not only collective but also correlative individual reparative duties. If what an individual did made no difference, why should she acquire such duties?

The short answer is that she is a member of the relevant putative group: the individual may not be personally responsible but she is one of those *collectively* so, and acquires individual correlative duties in the same way as members of a harming corporation would do so. This, however, only pushes back the problem. Why, if her actions have made *no* perceptible difference, should she count as a member of this weakly defined group at all?

One response is to appeal to precisely the point that *any one* of the individuals was similarly unnecessary. Thus, it would be arbitrary (and unfair) to identify the harming group as all acting in that way less one specific individual. This draws on the plausible idea defended by Murphy (1993, p. 278) of morality as a collective project: the ‘natural thought... that it is objectionable to expect agents to take up the slack caused by the non-compliance of others’.

However, the individual might retort that she is not expecting any such objectionable unfairness, because she does not think any of the others should be held accountable either – i.e. that it is not possible to identify a “putative group” responsible for the harm. To respond to this, I need to expand on the third part of the three-part condition for weak collective responsibility: the collective avoidability requirement. Although none of the individuals making up the putative group could *individually* have prevented the harm, they could have done so between them, presuming they could reasonably have acted otherwise from how they did.

In Overdetermination Cases, the harm would have been avoided had only most of those held collectively responsible acted differently. Thus, the objector can correctly point out that it could have been avoided without her changing her own behaviour (if enough others did so). But all members of the putative group have (by definition) reasonable alternative actions available to them, and the harm would not have



occurred had all the members of *any one* of many different possible substantial subsets pursued those alternatives. All the members of the putative group, including our hypothetical objector, are potential members of the harm-avoiding subset. The combination of this with the other elements of the condition (specifying that the harm *results* predictably from the combined actions of the set of individuals) takes those weakly collectively responsible out of the realm of positive responsibility and into that of negative responsibility, whilst maintaining the putative group as the locus of responsibility.

To hammer the point home, consider the following variants on a simple example. In all cases, a footbridge is unsafe and a person, Fred, is in the water below the bridge. In the first case, there are no signs that it is in anything less than good repair. I step on the bridge. It breaks. Fred is harmed. However, I intended no harm and could not reasonably have been expected to foresee it. I am not morally responsible.<sup>10</sup> In the second case, there are clear signs that the bridge is in a state of poor repair.<sup>11</sup> Moreover, I can see Fred in the water. I step on the bridge. I could reasonably have foreseen that my actions would result in harm and it is plausible to hold me morally responsible.<sup>12</sup>

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<sup>10</sup> I take this to be the standard view although it is not uncontroversial. Thomson (1990, pp. 227-248) has argued that 'we have claims against others that they not cause us harm' (p. 228) without restricting the harms to those intended or even reasonably foreseeable. Such claims should be considered, she contends, as constraints on the action of those they are claims against, even though in cases of unpredictable, unintended harm, the harming individual cannot be said to be at *fault*. However, as far as this paper is concerned the relevant question is whether the individual or putative group in the later cases (where there is reasonable foreseeability) can be held collectively responsible, not whether there is a claim against the individual (or group) even without foreseeability.

<sup>11</sup> To avoid questions about the extent to which Fred himself might be held responsible for his fate (for sitting under an unsafe bridge likely to be crossed by pedestrians), we can assume either that the bridge appears perfectly safe to him (perhaps the damage is only visible if it is approached by a higher path, and he walked up beside the river, or perhaps the sign indicating the disrepair is not visible from below the bridge) or that he cannot be expected to have foreseen the risk (say, he is a child or mentally handicapped).

<sup>12</sup> This might appear to run contrary to the Doctrine of Double Effect: '[T]he thesis that it is sometimes permissible to bring about by oblique intention what one may not directly intend.' (Foot 1978, p. 20) However, the DDE does not rule out the possibility that it *is* sometimes impermissible to bring about an

In the third case, the bridge can hold one person but not two. Wilma is approaching the bridge from exactly the same distance, at the same speed, as me. There are no signs that the bridge is weak. We step onto it at the same time; it breaks. The combination of our actions has caused the harm to Fred but we are not, I suggest, morally responsible: it is not reasonable to have expected us to foresee the harm or act in time to prevent it.

In the fourth case, the situation is as above except that there are warning signs on each side of the bridge. Wilma and I see these in plenty of time to stop but each of us steps onto the bridge regardless. We are collectively responsible for the harm, which we could have foreseen and could have prevented.

Fifthly, there are three people approaching the bridge. We all step onto it at the same time, despite warning signs. I might tell myself that my acting (or not acting) as I did made (or would have made) no difference to Fred, because two people besides me stepped onto the bridge and two would have been enough to break it. Each of the others might say the same. Does this render the harm causeless, or at least render it impossible to ascribe moral responsibility? Surely not.

Imagine how Fred might respond if the three of us were to scramble out of the water and wander on our way, each claiming: "Well, it wasn't *my* fault." He could very legitimately call after us: "Oi! You [plural] got me into this mess. Now get me out of it." If he had the energy, he could expand: "You knew what would happen if you all stepped onto the bridge, you saw the signs in time to decide to do otherwise. Any two of you could have prevented me from being hurt by waiting a couple of minutes. But you didn't wait: you went right ahead and broke the bridge."

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effect even obliquely. Moreover, it has been called into doubt by philosophers including Foot herself. (See 1978, pp. 19-31)

In such cases as this, the boundaries of the putative group are clearly defined. However, there are cases where contribution to harm is not through some all-or-nothing action (stepping on to a bridge) but through doing too much or too little of something. This raises the third objection. If there is no appropriate cut off point for inclusion as one of those collectively responsible, people whose contributions are comparatively tiny could become members of putative groups collectively responsible for hugely significant harms. At the extreme, they could become responsible for such harms merely by existing. This is counterintuitive. For example, almost everyone has *some* carbon footprint, but that does not necessarily render everyone including (say) a South American rainforest tribe collectively responsible for environmental harm.

A plausible suggestion would be that a person becomes one of the group collectively responsible for harm once her contribution exceeds the amount such that, were everyone contributing only to that level, there would be no harm.<sup>13</sup> This, I suggest, builds on the idea that the “cause” of a harm picked out in discussions of responsibility does not include all the actions and events necessary for that harm, but rather the one or two which stand out. The relevant question, as Feinberg (1987, p. 179) puts it, is: ‘What was different this time? What unusual cause accounts for this unusual result?’

Consider another variant on the bridge example. Suppose it can hold up to four people of an average weight of 65kg. Four people are approaching the bridge and all know this. Suppose for the sake of argument that I can tell by looking at the other three (as they can me) that their body weight is around or just below the average. We all step onto the bridge. However, I am carrying a 40kg rucksack. This pushes our combined weight above the limit. The bridge breaks and Fred is harmed. It was the

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<sup>13</sup> As Singer points out, in terms of even stabilising climate change, residents of the US, Japan and Western nations are already several times above this level. (2002, p. 35)

*combination* of my weight, my rucksack's weight, and the weights of Wilma and the other two people, as well as various other factors relating to the bridge being in its state of disrepair in the first place, that resulted in the harm to Fred. Nonetheless, there seems to be some special work being done by my carrying the rucksack, which makes me peculiarly accountable. Given this (and given the foreseeability of the harm, under the circumstances), *I* am morally responsible for the harm: not the others, and not some "we" including them and me.

Now consider a seventh variant: Wilma and I are both carrying 20kg rucksacks, and each of the two of us knows this. Then, combining the considerations behind attribution of responsibility in the fourth and sixth cases, she and I are collectively responsible for the harm. The additional trigger, or unusual cause, is foreseeably and preventably the combination of our actions.

In the final case, three of us are carrying such rucksacks. Building on the fifth case, although only two would be needed to bring the weight above the limit, the putative group consisting of the three of us (and not the fourth person) is collectively responsible for the predictable, preventable harm. It is in precisely the same way, I suggest, that the putative group consisting of those with a carbon footprint above the level at which there would be no harm were everyone polluting only to that level is collectively responsible for environmental harm.

## **II. Towards legitimate coercion**

### *i) A collective harm principle*

So far, I have suggested a way around the problem of identifying specific individuals, states or corporations directly (personally) responsible for shares of environmental harm. The second strand of the argument is to motivate the coercive enforcement of the individual duties acquired in the process of fulfilling the collective duty. I do this by advancing the following principle:

*Collective harm principle*

Curtailement of individual freedom, by a legitimate collective authority, is *prima facie* legitimate when the individuals are part of a group or putative group collectively responsible for harm, in the strong or weak sense, and the duties imposed on the individuals are fairly allocated as part of a collective endeavour to end that harm or compensate its victims.

This is a collective version of the harm principle, a tenet central to liberalism, which was identified as a core assumption at the start of this paper. In its original formulation, the principle is as follows (Mill 1859, p. 14):

the sole end for which mankind are warranted, individually or collectively, in interfering with the liberty of action of any of their number, is self-protection. That the only purpose for which power can rightfully be exercised over any member of a civilised community, against his will, is to prevent harm to others.

However, it is important to clarify which element of this is the “core tenet” to which I refer. Mill’s principle can be split into two parts:

(Implicit) *The positive claim*: that it is sometimes permissible to limit the liberty of action of an individual human being in order to prevent his harming others.

(Explicit) *The negative claim*: that this is the *only* circumstance in which such interference is permissible.

My focus is on the implicit positive claim rather than the negative claim, which, in any case, is not generally adhered to in so-called liberal societies.

Before defending the expansion of the principle in II.ii, below, it is worth also making explicit the following points. Firstly, unlike Kernohan (1998), whose arguments I will draw on and who is concerned specifically with state level authority, I am not restricting discussion to existing political institutions. As noted in the introductory section, this leaves open the question of where exactly the decision-making body is: at the level of what was the putative and has since become a structured group, fulfilling its collective duty; at some subset level (e.g. a Western state government), or at a broader, global level, imposing fulfilment of the collective duty on the harming putative group.

Secondly, I am not suggesting that coercion is *always* appropriate in such cases. Hardly anyone would make this claim even with regards to the individual harm principle. Rather, the harm principle seems to shift the burden of proof, so that it is those harming who have to provide a legitimate reason as to why they should not be coerced out of it.

## *ii. Defending collectivisation*

Although the harm principle has standardly been taken to apply only to harm for which the individual concerned is directly personally responsible, its collectivisation seems to me not only compatible with, but essential to, upholding the core values of liberalism.

There is nothing in Mill's original wording, above, to restrict the principle to harm caused by individuals, *qua* isolated individuals. Indeed, the broader collective version is in keeping with his own specification (1859, p. 14) that '[t]he... part of the conduct of any one, for which he is amenable to society, is that which concerns others'. It has been precisely my contention in Part I above that, in situations where harm results predictably from the combination of actions of similarly motivated individuals, each individual's action must unavoidably be regarded as "concerning others".

Harm is done – and individual human lives are circumscribed – not only by individuals, states and corporations but also collectively, by individuals making up only putative groups. Moreover, the modern liberal focus is on protecting equal liberty, or liberty *as compatible with like liberty for everyone else*.<sup>14</sup> This was made explicit at state level by Rawls (1971, p. 266) and later transposed by liberal cosmopolitans to the global level (see for example Beitz 1975, 1983). Given this, a consistent liberalism sensitive to the current climate seems to me bound to allow for political action to prevent such collective harm.

A more specific defence, against potential objections to the collectivised principle, can be borrowed from Kernohan (1998, pp. 83-85). He defends a slightly broader accumulative harm principle legitimating policies which violate state neutrality where individual activity 'is part of an accumulative activity which brings about harm to others' (p. 76). His argument consists of responses to three worries, two of which are

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<sup>14</sup> See also the defence against libertarian objections, in III.ii.

relevant here.<sup>15</sup> Firstly, that '[t]he individual's own actions may be harmless and would not be liable to regulation if others were not taking similarly individually harmless actions. It appears that the individual is being penalised for what other people do.' (p. 83)

This, as Kernohan suggests and as should be clear from Part I, misapplies our intuitions. Individuals are penalised for their own actions, albeit in the context of others doing the same: 'If they had been doing something else instead, no penalty would have been assigned.' (Kernohan 1998, p. 83) It is a putative group, of which she is *knowingly* (or reasonably foreseeably) a part, which is being held accountable, and it is as a member of the group that she is penalised.<sup>16</sup>

The other concern addressed by Kernohan (1998, p. 83) is that individuals could become subject to 'overly onerous duties'. However, he (p. 85) points out that similar worries could be raised with respect to the individual harm principle, without requiring us to reject it altogether.

Suppose a man is wildly flailing about with his fists... [He is] liable to the imposition of a duty which will prevent him from harming bystanders. But what duty? Many duties would succeed in preventing harm: Thou shalt not hit others. Thou shalt not flail about with thy fists. Thou shalt immediately commit suicide. Thou shalt present thyself to the nearest servant of the state for summary execution... Only the first of these, however, is a contender, for though the [harm principle] licenses the imposition of duties to prevent harm, it must be supplemented with considerations of justice and efficiency to determine what particular duties to impose.

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<sup>15</sup> The third (1998, p. 83) focuses on the cases of pornography and cultural oppression, with which he is particularly concerned.

<sup>16</sup> This is a parallel point to that advanced by May (1992, p. 112) against thinkers who reject his collective inaction model on the grounds that individual responsibility cannot change just because of membership of a group.



Similarly with the collective principle, the point 'is to indicate when it is permissible to impose maximally equitable, minimally onerous harm-preventing obligations' (1998, p. 85). As I have already stressed, the requirements that any coercively imposed duties be equitably assigned, and that they be made by collective institutions meeting strict criteria of legitimacy and representativeness, are prerequisites for their legitimate imposition, although there is no space here to expand on these further conditions.

### **III. Climate change and coercion: rights and excuses**

#### *i. Environmental harm and excuses*

I have defended two ideas which, I suggest, can be used to overcome the apparent tension between the need for strong collective environmental decision-making and the liberal doctrine of minimal interference with individual liberty: a model of weak collective responsibility for harms resulting predictably from the aggregation of individual actions, and a collectivised version of the harm principle.

Climate change occurs predictably through the aggregation of our individual acts. Those who cross the threshold for membership in the harming putative group, as specified in I.iii, roughly equate to the global elite. Different action by any number of potential subsets, each containing many but not necessarily all of us, would have avoided harm.<sup>17</sup> Moreover, as members of that global elite, living well above

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<sup>17</sup> For the purposes of this paper, I am concerned with the ongoing harm done by current generations of the global elite. However, the argument could plausibly be extended to include in the putative group members of past generations beyond the point (itself a matter for debate) at which the harm became reasonably foreseeable. This would of course raise further questions, beyond the scope of this paper, of the fairness (or otherwise) of imposing more stringent duties on current members of the putative group because those now dead cannot be made to do their share.

subsistence level, we had reasonable, lower-carbon alternative actions available to us.<sup>18</sup> The resulting harm impacts (also predictably) on those already threatened by climate change and future generations.<sup>19</sup>

However, as stressed in II.i above, not even the most avid defender of the harm principle would claim that coercion is *always* appropriate in cases of individual or collective harm. Rather, the principle shifts the burden of argument (against coercion) onto those harming. The next two subsections will briefly consider and reject some of the ways in which this might be done. The first level at which objections might be raised is against the attribution of weak collective responsibility for harm and correlative duties. I will address this here, before turning in III.ii to the possibility of appeal to individual rights to veto coercive enforcement of such duties.

Certain excuses are standardly used to argue that an individual who is responsible for some harm, has nonetheless acted *permissibly*.<sup>20</sup> The harm is not morally unacceptable and does not give rise to the usual correlative duties. Consider the following scenarios:

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<sup>18</sup> See also the dismissal of Excuse (1) in the next subsection. To reiterate Footnote 5, that is not to say that, considered only as individuals, we *should* have pursued those alternatives, or even that we should necessarily do so now other than as part of a collective endeavour.

<sup>19</sup> Of course, in referring harm to future generations, I run the gauntlet of the Non-Identity Problem (Parfit 1984, pp. 358-359). Given that future generations if we tackle climate change will not be composed of the same individuals as if we don't, how can we have been said to have *harmed* individual members of future generations unless they have so low a quality of life that it would be better for them not to have lived? I will not add to the wealth of discussion on this tricky philosophical point (e.g. Parfit 1986, Woodward 1986, 1987, Weinberg, 2008). Instead, I note, briefly, that taking the NIP seriously has far-reaching and intuitively repugnant consequences, as it would render morally permissible almost *any* policy which changes the circumstances of only the as-yet-unborn, so long as it at the same time affected who those future generations were. Moreover, although I will not defend this here, I think it plausible to skirt the NIP by specifying that when I refer to "harming future generations" I mean limiting the life prospects of individuals within those generations (whoever they turn out to be) by leaving them with circumstances within which their scope to flourish is limited in comparison with ours.

<sup>20</sup> I acknowledge the distinction, in legal philosophy, between "excuse" and "justification" (e.g. Austin 1956, Robinson 1975, Husak 2005). However, with the *moral* distinction itself a matter for debate, and nothing hinging on it as far as this paper is concerned, I will understand moral "excuses" as also including justifications.

- 1) *Unacceptable cost to self*: the cost to the individual concerned, of not bringing about the harm, is too high.
- 2) *Worse alternatives*: in not causing this harm, the individual would cause (or fail to prevent) some other, far greater harm.
- 3) *Consent*: the person (or persons) being harmed has (have) given her (their) free informed consent to the harm.

Let us begin with (1). The most severe costs have already been excluded by the specification, as one of the conditions for weak collective responsibility, that contributing individuals had reasonable alternative actions available to them. Generally, moreover, the force of this excuse depends on the cost *compared with* the cost of the harm to the person harmed. In the collective environmental case, any such claim seems wildly implausible, at least as regards the global elite. As Shue (1992, p. 394) points out, the interests at stake for those harmed are ‘vital interests—survival interests’. Much of our greenhouse gas output serves luxury purposes (e.g. Shue 1993, pp. 54-58).

Turning to the second get-out clause, the most plausible version would be that we avoid worse harm by focusing on helping today’s global poor, rather than tackling climate change. On the face of it, this could seem convincing. Consider, for example, a dilemma faced by an individual in the UK concerned both by the plight of those in developing countries and by the threat of climate change. Should she buy fair trade fruit, benefiting farmers in the developing world, or should she buy British and cut down on air miles?

This complex issue merits much more space than I will give it here. I certainly would not deny the urgent claims (undoubtedly of humanity, arguably of justice) of

the global poor on the wealthy elite. However, I will note, briefly, the following. Firstly, the poor (or many of them) are *already* harmed by climate change. While it is sometimes plausible that harming someone can be in their all-things-considered interest (if the harm is a side-effect of some activity conferring a greater benefit), a strong empirical argument would be needed to show that the *overall* benefits even to the poor in this generation are higher than the costs. Given that the primary beneficiaries of climate change are the global elite, through activities only some of which can be said (as with global fair trade) to benefit the global poor, it is unlikely that such an argument could be made.

Given this, the case made above for collective responsibility for harm, motivating a collective duty to end that harm and aid its victims, would still stand. A detailed discussion of what I have called supplementary individual duties is beyond the scope of this paper, but there is a distinction between what we are required to do together and what each individual should do in the absence of any such collective endeavour. The point brought out by this paper is precisely that such individual dilemmas as that of the well-intentioned individual above are not most helpfully considered in isolation. Ensuring that the costs are not borne, directly or indirectly, by the world's poorest, would be one of the factors determining a fairly distributed, collectively-organised attempt to tackle climate change.

Moreover, secondly, even given a convincing empirical argument for the claim that climate change overall is more beneficial than harmful to the global poor, for example through the industrialisation of countries such as China and India (see also Footnote 27, below), there would remain the problem that refusing to tackle climate change would simply shore up greater problems for future generations. So long as climate change gets worse, poverty can be expected to do the same.

The third excuse, *Consent*, has to be evaluated with regard to both present and future victims. It seems obvious that future generations not only could not, in practice, but would not, in principle, consent to being left with a world damaged to the extent of severely limiting their potential to live flourishing lives.<sup>21</sup> To make the point with an analogy, suppose my neighbour says to me: “I want to have a party, with a giant bonfire, as a result of which your garden will be damaged by smoke and piled up with rubbish. This puts yours and your family’s health at risk. You are not invited to the party. Do you consent?” Unless I am altruistic to the point of masochism, I will not.<sup>22</sup>

With regard to current generations, the consent excuse is familiar from cases of harm to a specific individual or group: the African worker, it is suggested, *consents* to take a job with enormous health risks; the poor African American community *chooses* to allow waste to be dumped on its land in return for payment; poor countries *consent* to take waste from the West. Such cases have been extensively discussed by Shrader-Frechette (2002, pp. 71-93 and 124-129) and I will confine myself to three brief points.

Firstly, whatever the alleged plausibility of appeal to consent in cases of specific environmental harms, usually where there is at least some notional payment to those harmed, it is (even) less plausible to claim consent in cases where the harm is done to the global poor as a whole, through global climate change.

Secondly, even in those narrower cases, the claim that there has been *free informed consent* by those harmed often falls apart upon investigation. Often, consent turns out to be by some not necessarily representative subgroup or external body. (See for

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<sup>21</sup> For a more detailed discussion, see Shrader-Frechette’s (2002, pp. 105-113) treatment of harm to future generations through (allegedly) permanent geological disposal of nuclear waste.

<sup>22</sup> The NIP might be raised again here, the claim being that future individuals *would* consent to actions which bring about a future world (even a damaged one) in which they exist rather than having no life at all. However, I refer the reader to Footnote 19 and to the third point made (below) in the discussion of current generations.

example Shrader-Frechette 2002, pp. 124-129.) Moreover, the four requirements for such free informed consent are often unsatisfied: full disclosure of information about the risk, competence of victims to evaluate it; victims understanding the danger; and voluntariness (Shrader-Frechette 2002, p. 77).

Thirdly, cases where individuals *do* consent to being exploited serve not to show that an act was permissible, but rather to indicate that consent, whether or not it is necessary, is not sufficient for moral permissibility. There is something wrong about a situation in which a person has to accept a threat to some fundamental interest, such as health, in order to protect some other such interest, for example nutrition. The fact that they do, in practice, accept it does not protect the harmer or harmers from negative moral judgement.<sup>23</sup>

## *ii. A “right” to pollute?*

Having dismissed the moral “excuses”, above, now consider another way in which members of the global elite might protest against the coercive enforcement of environmental duties, by any collective authority. This is by appeal to alleged individual rights, which such enforcement would violate.<sup>24</sup>

The possibility of rights protecting individuals against application of the harm principle has long been acknowledged by its proponents. As already stressed, Mill does not regard harm to others as a sufficient condition for legitimate interference. Rather, he argues (1859, pp. 83-84): ‘As soon as any part of a person’s conduct affects prejudicially the interests of others, society has jurisdiction over it, and the

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<sup>23</sup> Shue (1999, p. 41) makes a similar point.

<sup>24</sup> This might also be framed as a fifth moral excuse, the idea being that, even if there is an individual duty to comply with collectively-acquired environmental duties, this clashes with individual rights and so is overridden. However, this can be dismissed by pointing out that it is perfectly possible to have a right to do something which is nonetheless morally wrong. See Waldron 1981 or Steiner 1996.

question of whether the general welfare will or will not be promoted by interfering with it, becomes open to discussion.’ Corresponding to this “general welfare” is a system of *social* rights, and it is only when actions harming others fall outside their sphere that the state can interfere with individual freedom.

This paper does not offer a purely utilitarian argument and, like many liberals, I do not uphold Mill’s eschewal (1859, p. 15) of natural or human rights. Thus, rather than remain within the framework of social rights grounded in overall welfare, the question here is more general: what rights might individuals in this generation’s global elite have such that, while it is unfortunate that what they are doing results in harm to others, they have a perfect right to do it, the others have no right that they not do it, and they cannot legitimately be coerced into not doing it?

Clearly, the appeal cannot be to a right to unrestricted negative liberty, as this would simply beg the question: it is precisely the legitimacy of limiting such liberty to avoid harm which is under discussion. Such a right would undermine the whole idea of the harm principle. Moreover, it would not be able to carry the argument. There are negative freedoms at stake on both sides of the debate. The liberty of a resident of a Mexico City shanty town is restricted if he attempts to take his asthmatic child into a private health spa, but is forcibly stopped.<sup>25</sup>

Nor will self-ownership, alone, do the necessary work, for it is not merely our own bodies and our own labour that we use to pollute. Rather, what are required for members of this generation to have an all-trumping right to continue to act in the ways which in combination produce harmful climate change, are not only strong self-ownership rights, but also some very stringent rights of ownership of natural resources. These would have to be strong enough to justify not only using up finite

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<sup>25</sup> This is a parallel to the example offered by Cohen (1995, p. 58) against the libertarian: of the woman whose negative liberty is restricted when she lacks the money to pay for a Selfridges sweater and so is prevented from carrying it out of the shop.

resources, but also the devastating impact this use has on potentially unlimited resources such as water and air.

Full discussion of this point would require a detailed analysis of (particularly libertarian) attempts to derive property rights. However, it is enough for now to point out that it is unclear how a plausible derivation of such rights could be provided and, given the severity of the harm in question, the onus is on polluters to come up with such an account. Until they do, they have one significant argument the less against the legitimacy of coercive enforcement of environmental duties.<sup>26</sup>

This completes the twofold argument of this paper: for a collectivised understanding of moral responsibility for harm and a collectivised harm principle. In closing, I stress again that this is only one step towards defending collective environmental decision-making and its coercively-backed implementation (at whichever level). Before they could legitimately be imposed on individuals, environmental duties would have to satisfy further conditions. These conditions would apply not only to the fairness of the way in which individual restrictions are distributed (including such factors as the cost to individuals of complying) but to the representativeness and legitimacy of the institution (state-level, global or somewhere in between) which distributed them.

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<sup>26</sup> A possible further objection is that “rights to pollute”, grounded in entitlements to some share of the world’s resources, could more plausibly be claimed by those in polluting developing countries, such as China and India, than by those in Western countries who have long exceeded the level at which, were everyone to emit at that level, there would be no environmental harm. I cannot here give this the detailed analysis it deserves. However, the fact that others have done more harm (and for longer) is not generally taken as excuse (or justification) for doing harm oneself. Moreover, such considerations as equality in terms of opportunity to flourish, as well as past contribution to harm, would certainly be part of determining the fairness of an allocation of individual (or state) duties as part of a collective attempt to tackle climate change – which fairness, as I have already stressed, would be a further condition on the *legitimate* enforcement of environmental duties. This might lead to the conclusion that China, for example, does not have the same duties to cut pollution as (say) the US. To say we are all part of the collective required to tackle climate change is *not* thereby to claim that the same sacrifices should be required of each of us.



Indicating what such conditions would be is a massive project, but it is not the task of the current paper.

That is, simply, to resolve the apparent tension highlighted in the opening. The problem of climate change undoubtedly calls for collective action but this does not require us to abandon what is most central to, and morally compelling about, liberalism. Such solutions could fit naturally within a liberal world view which seeks to protect the sphere of the individual but to do so for *all* individuals, and is, accordingly, prepared to curtail where necessary the liberty of those individually *or collectively* responsible for harm in order to preserve that of those harmed.

### **Acknowledgements**

**This paper is based on arguments developed while I was supported by an Arts and Humanities Research Council Postgraduate Award and subsequently by a Royal Institute of Philosophy Jacobson Bursary. Earlier versions were presented as “Collective Harm and Environmental Duties” at: Brave New World at Manchester University, June 2007, the Manchester Political Theory Workshops, September 2007, and the V Pavia Graduate Conference in Political Philosophy, September 2007. I have benefited greatly from detailed discussion of earlier drafts with Jonathan Wolff and Michael Otsuka, and from feedback and advice from Susan James and Leif Wenar. I am also grateful for insightful written comments at various stages from a number of individuals, including Cecile Fabre, Jennifer Clare Heyward, Catriona McKinnon, and Tom Porter.**

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